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Court hears arguments in McCleary school-funding case

Washington state's Supreme Court questioned Wednesday why it shouldn't hold state lawmakers in contempt for not fully funding K-12 education. It's not known when the justices will rule, but after Wednesday's hearing, it was clear their patience is wearing thin.

By Joseph O'Sullivan and John Higgins

Seattle Times staff reporters



OLYMPIA — Justices from the state's top court sharply questioned an attorney representing the Legislature on Wednesday over why lawmakers shouldn't be held in contempt for not providing a plan to adequately fund Washington's public schools.

In a 50-minute session inside the Temple of Justice in Olympia, the nine justices of the state Supreme Court repeatedly asked why they should believe the Legislature's promise that it will make more progress in the 2015 budget session than it has in all other sessions since the court's 2012 landmark school-funding decision.

"I thought the questioning was fairly aggressive toward the state's positions," said state Sen. David Frockt, D-Seattle, who serves on the Senate's budget committee.

"I think it's pretty obvious that there's likely to be a finding the state is in contempt," he added later.

But what might the court issue in the way of sanctions, and when? That was much less clear.

"I think it's really hard to tell," Stephanie McCleary, the lead plaintiff, said after the hearing ended.

The unusual proceeding was the latest clash between the Legislature and the high court arising from the 2012 ruling in which the court declared lawmakers are violating the constitutional rights of the state's 1 million schoolchildren by failing to live up to the state constitution's requirement to provide them with a basic education.

The court called for the hearing in April, after the state failed to craft a funding plan by the end of the 2014 legislative session.

If the court finds the Legislature in contempt, it could punish lawmakers by imposing fines, blocking the funding of noneducation programs or even selling state property.

On Wednesday, the Temple of Justice felt like the proverbial woodshed, with justices demanding lawmakers to explain why they shouldn't be punished.

"It's been said that insanity is defined as doing the same thing over and over and expecting a different result," said Justice Charles Wiggins, questioning why the court should continue to wait.

The plaintiffs' attorney, Thomas Ahearne, argued that the Supreme Court risks becoming an irrelevant branch of government if it doesn't hold the Legislature accountable for failing to carry out the court's order to submit the funding plan by April — or at least by the end of 2014.

That would require a special session, like the one the Legislature convened last year to approve tax subsidies for Boeing and in 1995 to help finance what is now Safeco Field.

"Every year that we just keep talking about this, we're losing kids," Ahearne said. "They lose forever another year of their education."

If the court fails to act, he suggested that a saying emblazoned at the Temple of Justice, "Justice — Yesterday, Today, Tomorrow" might have to be changed to "Justice maybe next year."

Deputy Solicitor General Alan Copsey, representing the Legislature, said the court shouldn't mistake honest political disagreement over how to fund education for contempt, warning that any premature sanction could upset the chances to reach a deal in the 2015 budget year.

"The Legislature has told you unambiguously that it understands the seriousness of the 2015 session," Copsey said. "I think it deserves the court's respect to give it a chance to follow through on that commitment."

But in their questions, justices repeatedly pressed Copsey on why the Legislature should be given the benefit of the doubt and not be punished ahead of the 2015 session.

In one exchange, Chief Justice Barbara Madsen noted that one excuse for inaction was that the political process requires a meeting of minds across party lines.

Madsen: "What is it that you think is going to change between now and say the end of the next session with respect to those reasons? Why aren't those reasons we're going to hear again at the end of the legislative session in 2015?"

Copsey: "There will be an operating budget. There will be legislation that the court can look at. The court will have much more information, much more detail after the 2015 session than it has now."

After the hearing, attorneys on both sides said they couldn't tell what the court will decide.

"The court was clearly concerned about whether the state was going to make additional progress in the 2015 session," Dave Stolier, senior assistant attorney general, wrote in an email after the hearing.

Ahearne, the plaintiffs' attorney, said the Legislature has "never blown off the court like this before, so this is all new ground."

Jess Spear, a socialist candidate running against House Speaker Frank Chopp in November's election, said it was interesting that judges questioned the state on why it gave out tax exemptions to businesses rather than work on education funding.

"It was noteworthy that the state Legislature argued that it was easier to pass a tax handout rather than fund education," she said.

But standing in the back of the hearing room, Spear said she also could see some hesitation on the judges' faces.

Rep. Chad Magendanz, the ranking Republican on the House Education Committee, said no big surprises came out of the hearing.

"I think it's anybody's guess at this point," said Magendanz, of Issaquah, who watched some of the hearing on TV.

The case started in 2007 when the McCleary family of Jefferson County joined dozens of school districts, teachers unions and other organizations that filed the lawsuit in King County.

In 2012, the Supreme Court ruled in their favor and ordered the state to increase education spending enough to fulfill the Legislature's own definition of what it would take to meet the constitution's requirement of providing a basic education to all Washington children.

That means, among other things, the state fully covers districts' costs for school-bus transportation, smaller class sizes, daily operating costs and supplies such as paper and books.

The court set a 2018 deadline, which also matched what the Legislature had promised, recognizing it likely would take more than one legislative session to come up with the additional money, which has been estimated at between \$3.5 billion to \$7 billion per two-year budget period.

The Legislature added some of that money into its 2013-15 budget — approximately \$1 billion more for education — but the justices in January said lawmakers weren't moving fast enough and ordered them to submit a complete plan by the end of April for meeting the 2018 deadline.

The short 60-day legislative session ended without an agreement on a plan, which prompted the contempt hearing.

The justices had not been expected to issue a ruling Wednesday and they gave no hint of when they will issue their decision.

Joseph O'Sullivan: 360-236-8268 or josullivan@seattletimes.com.



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